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7
8 BEFORE THE
9 BOARD OF ACCOUNTANCY
10 STATE OF CALIFORNIA
11

12 In the Matter of the)	No. AC-96-34
Accusation Against:)	
13 Bonnie M. Miller)	STIPULATED
14 Ironsides Drive, #326)	SETTLEMENT AND
Santa Clara, CA 95054)	DECISION OF THE BOARD
15 CPA # 26659)	
16 Bonnie Miller Acct. Corp.)	
4633 Old Ironsides Drive, #326)	
17 Santa Clara, CA 95054)	
Accountancy Corp. # COR 3818)	
18 Respondents.)	
19)	

20 It is hereby stipulated by and between Bonnie M. Miller and
21 Bonnie Miller Accountancy Corporation (hereinafter
22 "respondents"), represented in this proceeding by Raymond S.
23 Finn, and the Board of Accountancy (hereinafter "Board"), State
24 of California, represented in this proceeding by Deputy Attorney
25 General Christiana Tiedemann, as follows:

26 1. Respondents have received and read the accusation
27 presently on file and pending in case No. AC-96-34 before the

1 Board. A copy of the accusation is attached hereto and
2 incorporated herein as Exhibit A.

3 2. Carol Sigmann, Executive Officer of the Board, is the
4 Complainant in the accusation which was filed and prosecuted
5 solely in her official capacity.

6 3. Respondent Bonnie M. Miller is licensed by the Board
7 under CPA Certificate No. 26659, which was at all times herein
8 relevant in full force and effect. Respondent Bonnie Miller
9 Accountancy Corporation was licensed by the Board under Corporate
10 certificate 3818. Respondent Bonnie M. Miller was at all times
11 pertinent to this case the sole shareholder of Bonnie Miller
12 Accountancy Corporation.

13 4. The Board acquired jurisdiction over respondents because
14 respondents are licensees of the Board and were served with
15 copies of the accusation and all other documents required by
16 Government Code section 11503 and 11505.

17 5. Respondents are aware of their right to a hearing on the
18 charges contained in the accusation, of their right to confront
19 and cross-examine witnesses, of their right to reconsideration,
20 to appeal and to all other rights accorded to them under the
21 California Administrative Procedure Act (Government Code section
22 11500 et seq.). Respondents freely and voluntarily waive these
23 rights.

24 6. In view of the fact that respondent Bonnie M. Miller is
25 currently suffering from a medical condition of uncertain
26 duration which renders her unable to practice as a certified
27 public accountant, and in order to avoid the time and expense

1 necessary for a administrative hearing, respondents agree to
2 surrender to the Board CPA Certificate No. 26659 and Corporate
3 Certificate 3818. Respondents surrender their certificates with
4 the understanding that they may apply to the Board for re-
5 issuance of their certificates one year from the effective date
6 of surrender and with the understanding that the Board will take
7 into consideration respondents' surrender of their certificates
8 when considering any such re-application for licensure.

9 7. Respondents understand that in signing this stipulation
10 rather than contesting the accusation, they are enabling the
11 Board to issue the following order without further legal process.

12 8. Based upon the foregoing recitals, THE PARTIES STIPULATE
13 AND AGREE THAT the Board shall, without further notice or formal
14 proceeding, issue the following order:

15 ORDER

16 (a) The surrender of CPA Certificate No. 26659 by
17 Bonnie M. Miller shall be accepted by the Board on the effective
18 date of this Decision.

19 (b) The surrender of Corporate Certificate No. 3818
20 shall be accepted by the Board on the effective date of this
21 Decision.

22 (c) If respondents, or either of them, seek reissuance
23 of a CPA or Corporate certificate or issuance of a new
24 certificate from the Board, they shall reimburse the Board for
25 costs of prosecution and investigation of this case (Accusation
26 No. AC-96-34) in the amount of \$7,966.20 as a prerequisite to
27 reissuance of a certificate or issuance of a new certificate.

1 (d) If respondents, or either of them, seek reissuance
2 of a CPA or Corporate certificate or issuance of a new
3 certificate from the Board, the allegations contained in
4 accusation number AC-96-34 shall be deemed admitted by
5 respondents, and each of them, for the sole purpose of the
6 Board's consideration of respondents' re-applications.

7
8 CONTINGENCY

9 9. This stipulation shall be subject to the approval of the
10 Board. If the Board fails to adopt this stipulation as its
11 Order, the stipulation shall be of no force and effect for either
12 party, nor shall it be mentioned or referred to in any legal
13 action between the parties.

14
15 SUBMITTAL

16 The attached stipulation is hereby respectfully submitted
17 for the consideration of the Board.

18 Dated: 11/13/98

DANIEL E. LUNGREN, Attorney General

Christiana Tiedemann

CHRISTIANA TIEDEMANN

Deputy Attorney General

Attorneys for Complainant

22 Dated: 11-16-98

RAYMOND S. FINN

R. Finn

RAYMOND S. FINN

Attorneys for Respondents

1 I have read the foregoing stipulation, have had an
2 opportunity to discuss it with my attorney and agree to all of
3 the terms set forth in the stipulation on behalf of myself and
4 Bonnie Miller Accountancy Corp.

5 Dated: NOVEMBER 12, 1998

X Bonnie M. Miller
BONNIE M. MILLER

7 ADOPTION

8 The foregoing Stipulated Settlement is adopted as the
9 Decision of the Board of Accountancy of the State of California.
10 This Decision shall become effective on March 4, 1999.
11 IT IS SO ORDERED this 2nd day of February, 1999.

12 BOARD OF ACCOUNTANCY
13 STATE OF CALIFORNIA

14 BY H. E. McPherson
15 Board President
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6 Attorneys for Complainant
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8

9 **BEFORE THE**
BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation) No. AC-96-34
Against:)
12) ACCUSATION
BONNIE M. MILLER)
13 4633 Old Ironsides Dr., #326)
Santa Clara, CA 95054)
14)
Certified Public Accountant)
15 Certificate No. CPA 26659)
16 and)
17 BONNIE MILLER ACCOUNTANCY)
CORPORATION)
18 4633 Old Ironsides Dr., #326)
Santa Clara, CA 95054)
19 Accountancy Corp. No. COR 3818,)
20 Respondents.)
21

22 Complainant Carol B. Sigmann, as cause for disciplinary
23 action, alleges:

24 1. Complainant is the Executive Officer of the
25 California Board of Accountancy ("Board") and makes and files
26 this accusation solely in her official capacity.

27 ///

EXHIBIT A

1 provided and now provides that a licensee's certificate may be
2 revoked for fiscal dishonesty or breach of fiduciary
3 responsibility of any kind.

4 8. Code section 5100(j) at all relevant times
5 provided and now provides, in pertinent part, that embezzlement,
6 theft, misappropriation of funds or property, or obtaining money,
7 property, or other valuable consideration by fraudulent means or
8 false pretenses constitutes unprofessional conduct.

9 9. Code section 5150 et seq. require registration of,
10 and regulate the practice of, accountancy corporations. Code
11 section 5156 provides for discipline of an accountancy
12 corporation for unprofessional conduct.

13 10. Code section 5107 provides for recovery by the
14 Board of all reasonable costs of investigation and prosecution of
15 the case, including, but not limited to, attorney's fees in
16 specified disciplinary actions. A certified copy of the actual
17 costs, or a good faith estimate of costs signed by the Executive
18 Officer, constitute prima facie evidence of reasonable costs of
19 investigation and prosecution of the case.

20 CAUSES FOR DISCIPLINE

21 11. Respondent is subject to disciplinary action
22 pursuant to Code section 5100. The circumstances are as follows:

23 a. Joseph and Connie Binkowski, tax clients of
24 Respondent (hereinafter "Binkowskis" or "clients"), relocated to
25 Michigan while retaining California real property as an
26 investment. The clients decided to sell the property and replace
27 it within 180 days with "like-kind" property pursuant to Internal

1 Revenue Code section 1031 (sometimes referred to as a "1031
2 exchange").

3 b. Respondent agreed to act as the accommodator and
4 trustee of a trust which she agreed to establish for the purpose
5 of holding the proceeds from the sale. Respondent failed to sign
6 or execute a trust agreement with the clients. Respondent opened
7 a "trust (bank) account" for the clients' "trust." Respondent
8 was also engaged to prepare the Binkowskis' corporate income tax
9 returns for 1992 and 1993.

10 c. The exchange of property occurred in August 1993,
11 with proceeds totaling \$408,207.30 received by Respondent on
12 August 13, 1993.

13 d. Taxes amounting to \$24,188.40 (originally withheld
14 by the title company pursuant to California tax law relating to
15 nonresident real property transactions) were remitted to
16 Respondent (pursuant to her filing an Affidavit, Form 597-B with
17 the Franchise Tax Board) by said title company in or about
18 September 1993.

19 e. A replacement property was purchased in Michigan
20 by the Binkowskis in November 1993, resulting in a taxable gain
21 of \$85,500. In November 1993, the clients instructed Respondent
22 to pay the estimated tax liability of \$6,500 so that the state
23 tax deduction would be available for the clients' 1993 Federal
24 income tax return (which was to be prepared by the Respondent).

25 f. This \$6,500 was withdrawn by Respondent from the
26 trust account in November 1993 but was not paid to the Franchise
27 Tax Board by Respondent per clients' instructions. California

1 law requires such payment within 20 days of the taxable event,
2 and interest and possible penalties accrue thereafter. The
3 Franchise Tax Board began collection proceedings against
4 Respondent (in her capacity representing the Binkowskis), and
5 Respondent, in or around June and July 1995, repaid the tax owing
6 and the accrued interest.

7 g. The following transactions reflect funds,
8 including the \$6,500 previously referenced, which were withdrawn
9 by Respondent from the trust account and transferred to
10 Respondent's accountancy corporation account:

	<u>Check No.</u>	<u>Date</u>	<u>Amount</u>
11			
12	113	11/24/93	\$ 6,500
	114	12/17/93	5,000
13	121	01/19/94	3,000
	122	01/25/94	2,500
14	123	02/04/94	8,000
	124	03/21/94	10,000

15 Between November 1993, and March 1994, the total
16 removed by Respondent from the trust account and placed in her
17 own corporate account was \$35,000.

18 h. Respondent disbursed, for her own use, the trust
19 monies from her corporate bank account during the time period of
20 November 1993 through June 1995. The amounts were ultimately
21 "remitted" by Respondent as follows:

	<u>Payment</u>	<u>Date</u>	<u>Amount</u>
22			
23	Profit to Binkowskis	03/21/94	25,559.87
24	Tax to Franchise Tax	06/95	6,500.00
25	"Fees" to Respondent	(retained)	\$ 3,500.00

26 i. The Binkowskis were unaware of Respondent's
27 conduct in making the above-described disbursements from the

1 trust account in Respondent's favor. Respondent did not timely
2 provide to the clients complete bank records, including bank
3 statements or cancelled checks reflecting the transactions.

4 Fiscal Dishonesty - 5100(h)

5 12. Incorporating herein the matters set forth in
6 paragraph 11, Respondent is subject to discipline pursuant to
7 Code section 5100(h) in that her conduct constitutes fiscal
8 dishonesty in that she, the trustee, withdrew from the trust
9 account the funds necessary to pay the tax owing the Franchise
10 Tax Board (\$6,500) in November 1993, but failed to pay the taxes
11 until June 1995.

12 13. Incorporating herein the matters set forth in
13 paragraph 11, Respondent is subject to discipline pursuant to
14 Code section 5100(h) in that her conduct constitutes fiscal
15 dishonesty in that she used the \$6,500 referenced in paragraphs
16 11 and 12 for her own purposes until she paid the tax in June
17 1995.

18 14. Incorporating herein the matters set forth in
19 paragraphs 11, Respondent is subject to discipline pursuant to
20 Code section 5100(h) in that her conduct constitutes fiscal
21 dishonesty in that she, the trustee, withdrew from the trust
22 account an additional \$2⁸,500 ^{QW 12/17/97} (in addition to the \$6,500
23 referenced in paragraphs 11 and 12) without authorization and
24 used said funds for her own purposes, and failed to repay any of
25 said funds until March 1994, at which time she paid \$25,559.87 to
26 the Binkowskis.

27 15. Incorporating herein the matters set forth in

1 paragraph 11, Respondent is subject to discipline pursuant to
2 Code section 5100(h) in that her conduct constitutes fiscal
3 dishonesty in that she, the trustee, retained from the trust
4 account \$3,500 which she maintains constitute fees for trust
5 management and tax preparation, but failed to bill her clients,
6 maintain records, prepare invoices, establish trust documents,
7 etc. and further "paid herself" from trust funds which is
8 contrary to appropriate trust procedures.

9 Dishonesty, Fraud and/or Gross Negligence - 5100(c)

10 16. Incorporating herein the matters set forth in
11 paragraph 11, Respondent is subject to discipline pursuant to
12 Code section 5100(c) in that her conduct constitutes dishonesty
13 in the practice of public accountancy in that she took, without
14 authorization, funds from the trust account and used them for her
15 own purposes without authorization from her clients and in
16 violation of the purpose of the trust.

17 17. Incorporating herein the matters set forth in
18 paragraph 11, Respondent is subject to discipline pursuant to
19 Code section 5100(c) in that her conduct constitutes fraud in the
20 practice of public accountancy in that she obtained funds from
21 the trust account by fraudulent means, deposited the funds to her
22 accountancy corporation account, and used them for her own
23 purposes.

24 18. Incorporating herein the matters set forth in
25 paragraph 11, Respondent is subject to discipline pursuant to
26 Code section 5100(c) in that her conduct constitutes gross
27 negligence in the practice of public accountancy in that she

1 failed to pay the Franchise Tax Board the tax owing in November
2 1993, as directed by her clients, in violation of applicable tax
3 laws and to the detriment of her clients.

4 Breach of Fiduciary Responsibility - 5100(h)

5 19. Incorporating herein the matters set forth in
6 paragraphs 11, Respondent is subject to discipline pursuant to
7 Code section 5100(h) in that her conduct constitutes the breach
8 of her fiduciary responsibility as trustee with respect to each
9 withdrawal and each consequent failure to properly discharge her
10 responsibilities as trustee, including but not limited to her
11 responsibility to pay taxes owed the Franchise Tax Board by a
12 date certain for the benefit of her clients.

13 20. Incorporating herein the matters set forth in
14 paragraph 11, Respondent is subject to discipline pursuant to
15 Code section 5100(h) in that her conduct constitutes the breach
16 of her fiduciary responsibility as trustee by virtue of her
17 failure to establish and maintain the trust as provided by law.

18 21. Incorporating herein the matters set forth in
19 paragraph 11, Respondent is subject to discipline pursuant to
20 Code section 5100(h) in that her conduct constitutes the breach
21 of her fiduciary duty toward her clients in that her failure to
22 pay their taxes when directed resulted in both the unavailability
23 of the deduction for the relevant year and the violation of
24 applicable tax laws to the detriment of her clients.

25 Embezzlement, Theft, Misappropriation of Funds or
26 Property, and/or Obtaining Money, Property, or Other
27 Valuable Consideration by Fraudulent Means or False
Pretenses - 5100(j)

1 22. Incorporating herein the matters set forth in
2 paragraph 11, Respondent is subject to discipline pursuant to
3 Code section 5100(j) in that her conduct constitutes multiple
4 instances of embezzlement, theft, misappropriation of funds or
5 property, and/or obtaining money, property, or other valuable
6 consideration by fraudulent means or false pretenses with respect
7 to each withdrawal reflected in subparagraph 11.g. above in that
8 her conduct constitutes the unauthorized taking of trust monies
9 for her own use in violation of the "trust" and/or without the
10 knowledge and consent of her clients.

11 23. Incorporating herein the matters set forth in
12 paragraph 11, Respondent is subject to discipline pursuant to
13 Code section 5100(j) in that her conduct constitutes multiple
14 instances of embezzlement, theft, misappropriation of funds or
15 property, and/or obtaining money, property, or other valuable
16 consideration by fraudulent means or false pretenses with respect
17 to her unauthorized and illegal use, between November 1993 and
18 June 1995, of the funds illegally withdrawn from the "trust"
19 account for her own purposes in violation of the "trust" and/or
20 without the knowledge and consent of her clients.

21 UNAUTHORIZED PRACTICE

22 24. On or about August 21, 1996, Bonnie Miller
23 represented to the Board that she practices public accountancy as
24 Bonnie Miller Accountancy Corporation. Based upon her own
25 admission, she practiced public accountancy as Bonnie Miller
26 Accountancy Corporation after the expiration of her registered
27 corporation license on June 1, 1996 and prior to its renewal the

1 following March, which constitutes cause for discipline of her
2 CPA license for unprofessional conduct under Code section 5100
3 and her corporation license under Code section 5156.

4 OTHER MATTERS

5 25. Pursuant to Code section 5107, it is requested
6 that the administrative law judge, as part of the proposed
7 decision in this proceeding, direct Respondent to pay to the
8 Board all reasonable costs of investigation and prosecution in
9 this case, including, but not limited to, attorneys' fees.

10 26. It is charged, in aggravation of penalty, that the
11 Respondent's conduct took advantage of a position of trust or
12 confidence to commit the offenses and that her conduct consisted
13 of several unauthorized instances of both taking funds from her
14 clients and using them as her own over a substantial period of
15 time totalling approximately 20 months.

16 PRAYER

17 WHEREFORE, complainant requests that the Board hold a
18 hearing on the matters alleged herein, and that following said
19 hearing, the Board issue a decision:


- 20 1. Revoking, suspending, or otherwise imposing
21 discipline upon Certified Public Accountant
22 Certificate Number CPA 26659, heretofore issued to
23 respondent Bonnie M. Miller;
- 24 2. Revoking, suspending, or otherwise imposing
25 discipline upon Bonnie Miller Accountancy
26 Corporation license No. COR 3818 awarding the
27 Board costs as provided by statute; and

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2 ///

3 3. Taking such other and further action as the Board
4 deems proper.

5 DATED: November 13 1997

6 
7 Carol B. Sigmann
8 Executive Officer
9 Board of Accountancy
10 Department of Consumer Affairs
11 State of California

12 Complainant

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14 JCW:pam
15 CA\JEANNE\MILLERB.ACC
16 (10/24/97)

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